

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MONTANA**

In re

**YELLOWSTONE MOUNTAIN
CLUB, LLC,**

Debtor.

Case No. **08-61570-11**

Jointly Administered
with:

In re

**YELLOWSTONE
DEVELOPMENT, LLC,**

Debtor.

Case No. **08-61571-11**

In re

BIG SKY RIDGE, LLC,

Debtor.

Case No. **08-61572-11**

In re

**YELLOWSTONE CLUB
CONSTRUCTION COMPANY,
LLC,**

Debtor.

Case No. **08-61573-11**

O R D E R

At Butte in said District this 5th day of December, 2008.

In the above-referenced jointly administered Chapter 11 bankruptcies, CrossHarbor

Capital Partners and CIP Yellowstone Lending, LLC (collectively referred to as "CrossHarbor") filed a Motion for Telephonic Hearing Pursuant to Local Rules 5074-1 and 9014-1 on December 4, 2008. Credit Suisse, through counsel, filed a Response to CrossHarbor's Motion on December 5, 2008, stating that Credit Suisse had no opposition to an emergency hearing on CrossHarbor's Motion. Thus, an emergency hearing was held December 5, 2008, at 11:00 a.m. via video and telephone on CrossHarbor's objection to Credit Suisse's various discovery requests and subpoenas.

The following parties lodged their appearances at the December 5, 2008, hearing: James A. Patten of Billings, Montana, for the Debtors; Daniel P. McKay of Great Falls, Montana, Office of the U.S. Trustee; Mark S. Chehi of Wilmington, Delaware, Susan Brown and Megan Cleghorn of New York, New York, and Shane Coleman of Billings, Montana, for Credit Suisse; John Grant of Helena, Montana, and Jonathan B. Alter of Hartford, Connecticut, for the Ad Hoc Committee of Yellowstone Club Members; Matthew J. Cuffe and Ronald A. Bender of Missoula, Montana, for Michael Snow; Dean A. Stensland of Missoula, Montana, for Prim Vintage Development, L.P.; Benjamin P. Hursh of Missoula, Montana, William D. Lamdin of Billings, Montana, and Paul D. Moore of Boston, Massachusetts, for CrossHarbor; Stephen R. Brown of Missoula, Montana, for Garlington Lohn & Robinson PLLP and as Chair of the Unsecured Creditors' Committee; Quentin M. Rhoades of Missoula, Montana, for Normandy Hill Capital, LP; Keith Jones, Teresa G. Whitney and Joel E. Silverman of Helena, Montana, for the Montana Department of Revenue; and Steven Sklaver of Los Angeles, California, for Discovery Land

Company.¹ Ronald Greenspan, a restructuring real estate consultant with FTI Consulting, also appeared at the hearing. The Ad Hoc Committee of Yellowstone Club Members, the Unsecured Creditors' Committee and Discovery Land Company joined in CrossHarbor's objection to Credit Suisse's discovery requests.

Following a hearing held November 25, 2008, and a Memorandum of Decision and Order entered by this Court on November 26, 2008, Credit Suisse, on November 28, 2008, served and filed notice of the following:

1. A subpoena to CrossHarbor for the deposition of one or more persons with knowledge of various topics, to be held December 7, 2008, at 10:00 a.m. (EST);
2. Credit Suisse's 8-page First Request for Production of Documents to [CrossHarbor];
3. A notice to the Debtors of a deposition of one or more persons with knowledge of various topics to be held December 5, 2008, at 10:00 a.m. (MST);
4. Credit Suisse's 9-page First Request for Production of Documents to Debtors
5. A subpoena to the Ad Hoc Committee of Yellowstone Club Member for the deposition of one or more persons with knowledge of various topics, to be held December 6, 2008, at 10:00 a.m. (EST);
6. Credit Suisse's 8-page First Request for Production of Documents to Ad Hoc Committee of Yellowstone Club Members;

¹ Attorney Steven Sklaver was retained as counsel by Discovery Land Company just recently and orally requested permission to appear *pro hac vice*. The Court granted attorney Sklaver's oral request for purposes of the December 5, 2008, hearing and directed that attorney Sklaver file a written motion and pay the appropriate fee within 3 business days.

7. A subpoena to Edra Blixseth for her deposition to be held December 7, 2008, at 10:00 a.m. (PST);
8. Credit Suisse's 8-page First Request for Production of Documents to Edra Blixseth;
9. A subpoena to the Discovery Land Company, LLC for the deposition of one or more persons with knowledge of various topics, to be held December 7, 2008, at 10:00 a.m. (EST); and
10. Credit Suisse's 8-page First Request for Production of Documents to Discovery Land Company, LLC.

The Debtors have made their best efforts to comply with Credit Suisse's discovery requests and Debtors' counsel, in conjunction with Credit Suisse's counsel, has agreed that the following parties will be deposed:

Saturday, December 6, 2008, in Los Angeles, California: Ronald Greenspan at 10:00 a.m. (PST); Edra Blixseth at 2:00 p.m. (PST); and Hans Williamson at 4:00 p.m. (PST).

Sunday, December 7, 2008, in New York, New York: Steve Yankauer at 12:00 p.m. (EST).

The Court appreciates that the Debtors and Credit Suisse have endeavored to resolve their discovery issues without the involvement of this Court.

As for the depositions and discovery directed to CrossHarbor, the Ad Hoc Committee of the Yellowstone Club Members and Discovery Land Company, this Court's policy in limiting application of discovery rules to contested matters is embodied in its Local Rules. Mont. LBR 9014-1 provides that “[u]pon the request of any party, the Court, in its discretion, will determine whether the provisions of F.R.B.P. 7016, 7026, 9019 and any other rules should apply to any

contested matter, given the facts and the issues alleged in such matter.” In this case, Credit Suisse has skipped the simple but critical step of filing a motion seeking a determination as to whether F.R.B.P. 7016, 7026 and 9019 apply in these cases at this time.

This Court has steadfastly required that parties adhere to Mont. LBR 9014-1 and the Court will not waive such Rule at this time. This Court agrees that if a contested matter is pending, the various discovery provisions of the Federal Rules of Civil Procedure should apply. However, as previously stated, the parties first need a decision from this Court that the Federal Rules of Civil Procedure are applicable. Therefore, Credit Suisse's discovery requests and subpoenas, as they relate to CrossHarbor, the Ad Hoc Committee of Yellowstone Club Members and Discovery Land Company, are quashed. In accordance with the foregoing and the Court's ruling from the bench on December 5, 2008,

IT IS ORDERED that CrossHarbor's objection to Credit Suisse's First Requests for Production of Documents to CrossHarbor, the Ad Hoc Committee of Yellowstone Club Members and Discovery Land Company are sustained and said Requests for Production of Documents are quashed; and CrossHarbor's objection to Credit Suisse's subpoenas to CrossHarbor, the Ad Hoc Committee of Yellowstone Club Members and Discovery Land Company are sustained and the subpoenas directed to said entities are quashed.

BY THE COURT



HON. RALPH B. KIRSCHER
U.S. Bankruptcy Judge
United States Bankruptcy Court
District of Montana

